

1 (c) Pacific has also attempted to leverage its control over its operations
2 support systems ("OSS"), which Pacific is required by law to provide to CLECs such as Covad,
3 in order to gain unfair competitive advantages. For example, in connection with the anticipated
4 releases of new OSS systems for electronic ordering of services, Pacific required CLECs to agree
5 to new and onerous contractual terms that are inconsistent with, less favorable to, and more
6 restrictive of CLECs than the interconnection agreements each had negotiated and which the
7 Commission had approved.

8 44. In sum, by Pacific's policies and conduct described above, Pacific has
9 used its monopoly power in its COs, transport and local loops, and Covad's overall and
10 fundamental dependence on Pacific's critical facilities and services, to monopolize, maintain its
11 monopoly or attempt to monopolize the Local ISP Market and the Local Telecommuter Market.

12 EFFECTS ON COVAD AND CONSUMERS

13 45. Pacific's conduct inhibits facilities-based local telecommunications
14 service competition, creates substantial disruption to Covad's business, forces Covad to delay
15 operations and results in Covad failing to meet its obligations to its customers, causing
16 irreparable injury to Covad's goodwill and business reputation.

17 46. As a direct and proximate result of Pacific's unlawful conduct, Covad's
18 market entry has been impeded and frustrated, and Covad has been foreclosed from markets and
19 has lost sales, profits, and the value of its business. Covad has suffered and will continue to
20 suffer irreparable harm through loss of and injury to its trade and business in that (a) Covad has
21 been and will be precluded from entering into contracts for the sale of competitive local
22 telecommunications services, (b) Covad has been and will be precluded from carrying out
23 contracts already entered into for the sale of competitive local telecommunications services;
24 (c) Covad has been and will continue to be irreparably harmed in its reputation and goodwill;
25 (d) Covad and other competitive local telecommunications service providers will be hampered in
26 marketing, selling and providing their services and may be eliminated entirely; and (e)

1 independent sources for telecommunications transmission services to the Local ISP Market and
2 Local Telecommuter Market will be deterred and eliminated.

3 47. Pacific's conduct is harmful to competition and consumers in that it has
4 had and will continue to have the effects of: (a) denying Covad access to the Local ISP Market
5 and the Local Telecommuter Market; (b) denying the public free choice in the Local ISP Market
6 and the Local Telecommuter Market; (c) affecting a substantial amount of commerce in the
7 Local ISP Market and the Local Telecommuter Market; (d) eliminating competitors; (e)
8 substantially lessening competition and tending to create or maintain a monopoly in the Local
9 ISP Market and the Local Telecommuter Market; (f) creating higher prices for Local ISP Market
10 and the Local Telecommuter Market; (g) forcing consumers to use inferior local
11 telecommunications services; and (h) stifling the development of new and better local
12 telecommunications services.

13 FIRST CAUSE OF ACTION

14 (Sherman Act, Section 2 - Monopolization)

15 48. Covad incorporates the allegations in Paragraphs 1 through 47 as though
16 fully set forth here.

17 49. Pacific has monopoly power in all relevant local telecommunications
18 services, including the Local ISP Market and the Local Telecommuter Market, as well as in the
19 markets for COs, dedicated transport, and local loops, in each of the local service areas in which
20 it is the ILEC in California. Barriers to entry faced by those wishing to provide any of these
21 local telecommunications services are extremely high, even without Pacific's artificial inflation
22 of them because, among other things: Pacific enjoys the only ubiquitous physical local
23 telecommunications network within its territory; the costs of replicating even the necessary
24 portions of that ubiquitous network are prohibitively high; it would take an extremely long
25 period of time to replicate even the necessary portions of that ubiquitous network; and alternative
26 means of reaching local telecommunications consumers either do not exist or are not practicable.

50. Pacific has engaged in the anticompetitive conduct described above with the intent to preserve and extend its monopoly power and position in the Local ISP Market and the Local Telecommuter Market. Pacific's conduct has delayed and prevented Covad's entry into those markets. Despite the Commission's efforts to open up California's local service monopolies to competition, and despite Congress's mandate in 1996 in the Act to open up those markets, Pacific continues to dominate those markets through unlawful conduct, to the detriment of consumers and competition.

51. As a direct and proximate result of Pacific's monopolistic conduct, competition in the relevant markets has been injured, and Covad has been damaged in that (1) its costs of operation have increased in an amount to be determined at trial but believed to exceed \$1.6 million, and (2) its ability to penetrate Pacific's monopoly has been frustrated and delayed, causing Covad to lose potential customers and profits, and harming Covad's goodwill and reputation.

52. Pacific's continuing violations of its duties under the Agreement and under the applicable laws have caused irreparable harm to Covad's ability to compete in the Local Telecommunications Markets. Pacific threatens to continue to commit such violations, and unless restrained and enjoined, will continue to do so, all to the irreparable harm of Covad and consumers.

53. The harm to Covad from Pacific's activities is ongoing and cumulative, and is not susceptible to full relief via monetary compensation, leaving Covad no adequate remedy at law.

SECOND CAUSE OF ACTION

(Sherman Act, Section 2 - Attempt to Monopolize).

54. Covad incorporates the allegations in Paragraphs 1 through 53 as though fully set forth here.

1 55. Pacific has taken the actions described above in a willful effort and
2 attempt to gain or continue a monopoly in the Local ISP Market and the Local Telecommuter
3 Market.

4 56. Pacific has demonstrated a dangerous probability of success in its efforts
5 to gain, perpetuate or enhance a monopoly in the Local ISP Market and the Local Telecommuter
6 Market. Despite the Commission's efforts since 1993 to open up California's local service
7 monopolies to competition, and despite Congress's mandate in 1996 in the Act to open up those
8 markets, Pacific continues to dominate those markets, to the detriment of consumers and
9 competition.

10 57. As a direct and proximate result of Pacific's attempt to monopolize,
11 competition in the relevant markets has been injured, and Covad has been damaged in that (1) its
12 costs of operation have increased in an amount to be determined at trial but believed to exceed
13 \$1.6 million, and (2) its ability to penetrate Pacific's monopoly markets has been frustrated and
14 delayed, causing Covad to lose potential customers and profits, and harming Covad's goodwill
15 and reputation.

16 58. Pacific's continuing violations of its duties under the Agreement and
17 under the applicable laws have caused irreparable harm to Covad's ability to compete in the
18 Local Telecommunications Markets. Pacific threatens to continue to commit such violations,
19 and unless restrained and enjoined, will continue to do so, all to the irreparable harm of Covad
20 and consumers.

21 59. The harm to Covad from Pacific's activities is ongoing and cumulative,
22 and is not susceptible to full relief via monetary compensation, leaving Covad no adequate
23 remedy at law.

24 **THIRD CAUSE OF ACTION**

25 **(Sherman Act § 1 -- Restraint of Trade)**

1 60. Covad incorporates the allegations in Paragraphs 1 through 59 as though
2 fully set forth here.

3 61. Pacific's coercive and unnecessarily restrictive contractual requirements,
4 including its insistence on expensive, untimely, and unwarranted physical cages, and its improper
5 and onerous OSS Appendix effect an unreasonable restraint of trade. Pacific's conduct as
6 described above constitutes an unlawful contract or combination in restraint of trade, in violation
7 of Section 1 of the Sherman Act.

8 62. As a direct and proximate result of Pacific's restraint of trade, competition
9 in the relevant markets has been injured, and Covad has been damaged in that (1) its costs of
10 operation have increased in an amount to be determined at trial but believed to exceed
11 \$1.6 million, and (2) its ability to penetrate Pacific's monopoly markets has been frustrated and
12 delayed, causing Covad to lose potential customers and profits, and harming Covad's goodwill
13 and reputation.

14 63. Pacific's continuing violations of its duties under the Agreement and
15 under the applicable laws have caused irreparable harm to Covad's ability to compete in the
16 Local Telecommunications Markets. Pacific threatens to continue to commit such violations,
17 and unless restrained and enjoined, will continue to do so, all to the irreparable harm of Covad
18 and consumers.

19 64. The harm to Covad from Pacific's activities is ongoing and cumulative,
20 and is not susceptible to full relief via monetary compensation, leaving Covad no adequate
21 remedy at law.

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1 **FOURTH CAUSE OF ACTION**

2 **(Cartwright Act -- Cal. Bus. & Prof. Code § 16600 et seq.)**

3 65. Covad incorporates the allegations in Paragraphs 1 through 64 as though
4 fully set forth here.

5 66. The acts and conduct of Pacific as alleged above constitute an unlawful
6 contract or combination in restraint of trade as defined by California's Cartwright Act, Cal. Bus.
7 & Prof. Code §§ 16600 et seq.

8 67. As a direct and proximate result of Pacific's unlawful restraint of trade,
9 competition in the relevant markets has been injured, and Covad has been damaged in that (1) its
10 costs of operation have increased in an amount to be determined at trial but believed to exceed
11 \$1.6 million, and (2) its ability to penetrate Pacific's monopoly market has been frustrated and
12 delayed, causing Covad to lose potential customers and profits, and harming Covad's goodwill
13 and reputation.

14 68. Pacific's continuing violations of its duties under the Agreement and
15 under the applicable laws have caused irreparable harm to Covad's ability to compete in the
16 Local Telecommunications Markets. Pacific threatens to continue to commit such violations,
17 and unless restrained and enjoined, will continue to do so, all to the irreparable harm of Covad
18 and consumers.

19 69. The harm to Covad from Pacific's activities is ongoing and cumulative,
20 and is not susceptible to full relief via monetary compensation, leaving Covad no adequate
21 remedy at law.

22 **FIFTH CAUSE OF ACTION**

23 **(Telecommunications Act Violations)**

24 70. Pacific has violated its duty under the Telecommunications Act, and the
25 corresponding FCC regulations, to provide for physical collocation of equipment necessary for
26 interconnection. *See* 47 U.S.C. § 251(c)(6); 47 C.F.R. § 51.323. Pacific is not entitled to deny

1 physical collocation unless it has demonstrated to the Commission that physical collocation is
2 not practical because of space limitations. It has not done so in any of the many instances in
3 which it has denied Covad's requests for physical collocation.

4 71. Pacific has also breached its statutory duty to negotiate in good faith by its
5 unjustified insistence on caged physical collocation, and by its failure to cooperate to resolve its
6 alleged interconnection space limitations. 47 U.S.C. § 251(c)(1); 47 C.F.R. § 51.323(i).

7 72. By means of its unjustified and unreasonable insistence on caged physical
8 collocation, by its failure to make physical collocation available in numerous COs, and by its
9 failure to deliver timely and serviceable physical collocation sites, Pacific has also breached its
10 statutory duty to provide collocation and interconnection on "just, reasonable and
11 nondiscriminatory" terms. 47 U.S.C. §§ 251(c)(2)(D) and 251(c)(6).

12 73. In summarily rejecting Covad's cageless collocation proposal, Pacific
13 breached its duty to permit Covad to accomplish interconnection through any "technically
14 feasible" method. FCC *Interconnection Order*, ¶ 549.

15 74. As a direct and proximate result of Pacific's violations of the Act, Covad
16 has been damaged in that (1) its costs of operation have increased in an amount to be determined
17 at the hearing on this matter but believed to exceed \$1.6 million, and (2) its ability to penetrate
18 Pacific's monopoly market has been frustrated and delayed, causing Covad to lose potential
19 customers and profits, and harming Covad's goodwill and reputation.

20 SIXTH CAUSE OF ACTION

21 (Negligent Misrepresentation)

22 75. Covad incorporates the allegations in Paragraphs 1 through 69 as though
23 fully set forth here.

24 76. Pacific has maintained throughout the course of negotiations, and
25 subsequent to the execution of the Agreement when faced with requests for cageless collocation,
26 that collocation cages are necessary for security and/or confidentiality reasons.

1 77. Pacific has also maintained throughout the course of negotiations, and
2 subsequent to the execution of the Agreement when faced with requests for cageless collocation,
3 that it would provide serviceable physical collocation sites in a timely manner.

4 78. Pacific has also maintained at various times that space for collocation was
5 unavailable in a variety of COs although (a) in no instance did it allow Covad to verify those
6 statements, (b) Pacific continued to deploy its own new equipment in COs , and (c) in at least
7 some instances, Pacific later announced that space was available in COs in which it had
8 previously said there was no collocation space.

9 79. Pacific has misrepresented its ability to provision dedicated transport and
10 loops.

11 80. Pacific has misrepresented the availability of information and the quality
12 of access provided by its OSS.

13 81. Pacific had no reasonable basis for making those representations, which
14 are, in fact, false. Caged collocation is necessary neither as a security measure nor for
15 confidentiality reasons in order to provide physical collocation to Covad. Moreover, Pacific has
16 not provided physical collocation sites in a timely manner in a serviceable condition. Further,
17 Pacific has never demonstrated that collocation space is actually unavailable in any CO, and,
18 indeed, has demonstrated that space was in fact available where it had said there was none. In
19 addition, Pacific does not timely and properly provision dedicated transport or loops. Further,
20 Pacific's OSS does not provide the information or quality of access represented by Pacific.

21 82. Covad reasonably believed Pacific and relied on Pacific's representations
22 in entering into the Agreement with Pacific, in making payments for physical collocation sites
23 under the Agreement, in planning its own network and rollout schedule and in ordering services
24 from Pacific.

25 83. As a direct and proximate result of Covad's reliance on Pacific's
26 representations, Covad has been damaged in that (1) its costs of operation have increased in an

1 amount to be determined at the hearing on this matter but believed to exceed \$1.6 million, and
2 (2) its ability to penetrate Pacific's monopoly market has been frustrated and delayed, causing
3 Covad to lose potential customers and profits, and harming Covad's goodwill and reputation.

4 **SEVENTH CAUSE OF ACTION**

5 **(Interference with Prospective Economic Advantage)**

6 84. Covad incorporates the allegations in Paragraphs 1 through 78 as though
7 fully set forth here.

8 85. Covad has had, and continues to have, economic relationships with its
9 customers encompassing the probability of future economic benefit to Covad.

10 86. At all times relevant, Pacific had knowledge of these relationships.

11 87. By the conduct described above, Pacific has knowingly, wrongfully and
12 willfully engaged in wrongful conduct designed to disrupt these relationships. As described
13 above, Pacific's interference was wrongful beyond the fact of the interference itself.

14 88. Pacific has actually disrupted these relationships. In the absence of this
15 wrongful conduct, Covad would have entered into new agreements with numerous customers
16 who were Covad's customers, or with whom Covad had an economic relationship containing the
17 probability of future economic benefit to Covad, prior to Pacific's wrongdoing, but which
18 became Pacific's customers as a result of such wrongdoing.

19 89. By the foregoing acts, Pacific has intentionally, maliciously and
20 unlawfully interfered with the prospective economic advantage previously enjoyed by Covad.

21 90. As a direct and proximate cause of the foregoing acts by Pacific, Covad
22 has suffered economic harm in an amount to be determined at trial.

23 91. The harm to Covad from Pacific's activities is ongoing and cumulative,
24 and is not susceptible to full relief via monetary compensation, leaving Covad no adequate
25 remedy at law.

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EIGHTH CAUSE OF ACTION

(Unfair Competition - Cal. Bus. & Prof. Code § 17200 et seq.)

92. Covad incorporates the allegations in Paragraphs 1 through 86 as though fully set forth here.

93. The acts and conduct of Pacific as alleged above constitute unlawful and unfair competition as defined by California Bus. & Prof. Code § 17200, *et seq.*

94. Pacific's conduct as alleged above has damaged and will continue to damage Covad's goodwill and reputation and has resulted in a loss of revenue to Covad in an amount not yet ascertained.

95. The harm to Covad from Pacific's activities is ongoing and cumulative, and is not susceptible to full relief via monetary compensation, leaving Covad no adequate remedy at law.

NINTH CAUSE OF ACTION

(California Common Law Unfair Competition)

96. Covad incorporates the allegations in Paragraphs 1 through 90 as though fully set forth here.

97. The acts and conduct of Pacific as alleged above constitute unfair competition under California common law.

98. Pacific's conduct as alleged above has damaged and will continue to damage Covad's goodwill and reputation and has resulted in a loss of revenue to Covad in an amount not yet ascertained.

99. The harm to Covad from Pacific's activities is ongoing and cumulative, and is not susceptible to full relief via monetary compensation, leaving Covad no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Covad prays that the Court award relief as follows:

1 1. Judgment in favor of Covad on all claims;

2. An injunction (1) preventing Pacific from requiring Covad to accept, utilize and/or pay for caged physical collocation; (2) requiring Pacific to provide cageless physical collocation to Covad; (3) requiring Pacific to make collocation space available on a first-come, first-served basis; (4) preventing Pacific from denying physical collocation space without first proving to the Commission that space is truly unavailable; (5) requiring Pacific to provide timely, serviceable physical collocation sites (without cages or other physical barriers) to Covad; (6) requiring Pacific to timely provide to Covad operational unbundled dedicated transport facilities; (7) requiring Pacific to timely provide to Covad operational and complete unbundled local loops; (8) requiring Pacific to cease and desist from taking actions and making any statements that are designed or intended or calculated to have the effect of impairing Covad's ability to provide services based on its chosen variety of DSL technology; and (9) requiring Pacific to make available to Covad reasonable and nondiscriminatory access to Pacific's OSS.

14 3. Damages in amount to be proven at trial;

15 4. Treble damages on Covad's antitrust claims;

16 5. Punitive damages as permitted by the laws of the State of California;

17 6. Covad's reasonable attorneys' fees and costs; and

18 7. Such other and further relief as the Court deems just and proper.

19 DATED: June 12, 1998.

McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

By:

Alfred C. Pfeiffer, Jr.
Attorneys for Plaintiff
Covad Communications Company

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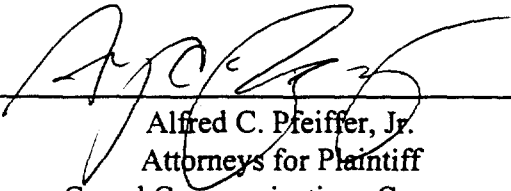
JURY DEMAND

Plaintiff Covad Communications Company hereby requests a trial by jury in this matter.

DATED: June 12, 1998.

McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP

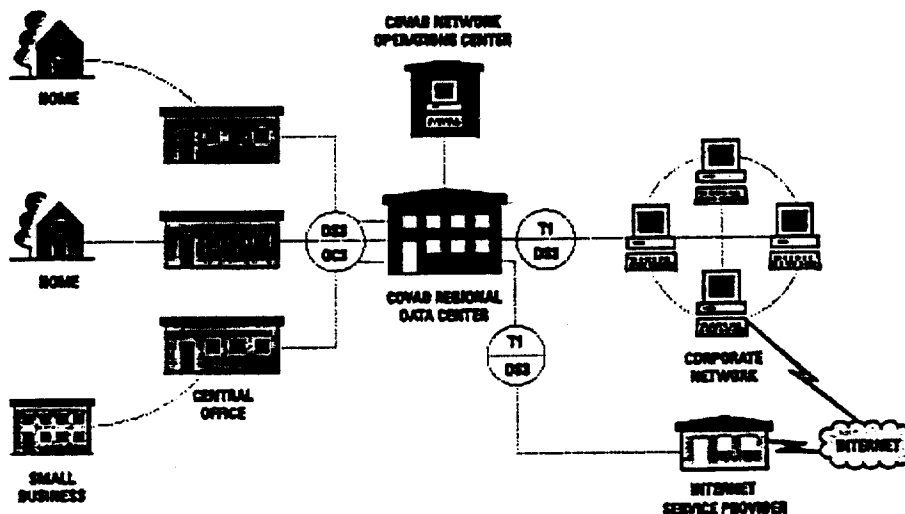
By:


Alfred C. Pfeiffer, Jr.
Attorneys for Plaintiff
Covad Communications Company



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What is DSL?
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Advantages
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Covad Network



DSL technology, coupled with Covad's Regional Network, provides a fast, secure access solution.

Covad's DSL service runs over a dedicated copper telephone line from each home or small business to the central office of a local telephone carrier—not over a shared network like cable modems or over the air like wireless solutions.

Covad's Regional Network connects the central office to the corporation or ISP at T1 or DS3 speeds. The resulting end-to-end network is private, digital, and packet-based. Covad provides end-to-end network management, proactively communicating with and supporting corporate network operations.



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webmaster@covad.com
Contact Covad at: 1-888-GO-COVAD

INTERCONNECTION AGREEMENT
BETWEEN
COVAD COMMUNICATIONS COMPANY
AND
PACIFIC BELL

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INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT ("Agreement"), made as of this 21st day of April 1997, is between Covad Communications Company ("Covad"), a California corporation, and Pacific Bell ("Pacific"), a California corporation.

RECITALS

WHEREAS, a major purpose of the Telecommunications Act of 1996 ("the Act") is to permit and encourage the vigorous competition that provides widespread consumer choice; and

WHEREAS, the most effective way to achieve this purpose is to eliminate any perceived or real market power possessed by some carriers; and

WHEREAS, this Agreement is intended to promote independent, facilities-based local exchange competition by encouraging the rapid and efficient interconnection of competing local exchange service networks; and

WHEREAS, the Parties seek to accomplish interconnection in a technically and economically efficient manner in accordance with all requirements of the Act;

WHEREAS, Section 252 of the Act mandates good faith negotiations between incumbent Local Exchange Carriers and any telecommunications carrier requesting interconnection without regard to the standards set forth in subsections (b) and (c) of Section 251 of the Act;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covad and Pacific hereby covenant and agree as set forth in this Agreement.

DEFINITIONS

For purposes of this Agreement, certain terms have been defined here and elsewhere in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning in the Act, unless the context clearly indicates otherwise.

as defined for billing Pacific in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 13 and in Covad's Cal. P.U.C. tariff.

10. TELECOMMUNICATIONS SERVICES AVAILABLE FOR RESALE [the Act Section 271(c)(2)(B)(xiv)]

The Parties agree that Pacific will provide telecommunications services to Covad for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the Act. Pacific's prices charged to Covad for resold services will be the resale rates determined by the Commission. With respect to those Pacific resale services for which the Commission has not yet set a resale discount, the interim price shall be set at 17% below Pacific's retail rate for the service or such greater discount as is made available to any other entity. Once the Commission establishes a resale discount for any such service, that rate will replace the 17% discount, unless a greater discount is made available to any other entity, in which case Covad, upon request, will be entitled to that greater discount.

11. COLLOCATION AND MID SPAN MEETS

Pacific shall permit collocation of any type of equipment used or useful for interconnection or access to unbundled Network Elements, in accordance with the Act and sections 579 through 582 of the FCC's First Interconnection Order. Such equipment includes but is not limited to transmission equipment, such as optical terminating equipment and multiplexers, equipment for the termination of basic transmission facilities, equipment for the termination and multiplexing of ISDN/xDSL loops and such additional types of equipment that may be agreed to by the Parties or designated in Future FCC or Commission rulings. If a request by Covad to collocate is denied on the basis of the equipment to be installed by Covad, Pacific shall prove to the Commission that such equipment is not "necessary" as defined by the FCC for interconnection or access to unbundled Network Elements.

11.1. Physical Collocation.

Pacific will provide for physical collocation of transport and termination equipment necessary for interconnection of Covad's network facilities to Pacific's network or access to unbundled network elements at its Wire Center premises. Such collocation shall be provided on a non-discriminatory basis according to the rates, terms and conditions contained in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 16, except as modified below.

Listed below are the rates that Covad shall pay for physical collocation at Pacific's Wire Center premises, along with other terms and conditions that will apply with respect to such physical collocation, beginning with the effective date of this Agreement:

11.1.1. Rates

- 11.1.1.1. All monthly rates and nonrecurring charges set forth in Section 16.7.1(A)(1) shall be charged at 65% of the rates stated;
- 11.1.1.2. The monthly rate set forth in Section 16.7.1(B)(1) shall be charged at 75% of the rate stated;
- 11.1.1.3. The monthly rates set forth in Section 16.7.1(C)(1) shall be reduced to zero;
- 11.1.1.4. The nonrecurring charges set forth in Section 16.7.1(D)(1) shall be charged at the greater of \$2,000 or the amount stated in the tariff;
- 11.1.1.5. The second sentence and the proration chart of Section 16.3.4 of Pacific's Schedule Cal. P.U.C. Tariff No. 175-T shall be changed to read:

The costs will be prorated and the prorated share refunded to previous collocator(s) as additional collocators use collocated services at that location within 60 months of when the billing for the first collocation space at that location begins, using the following schedule:

Collocator	Nonrecurring Charge	Refund
1st	100%	NA%
2nd	50%	50%
3rd	33.33%	16.67%
4th	25%	8.33%
5th	20%	5%
6th	16.67%	3.33%
7th	14.29%	2.38%
8th	12.5%	1.79%
9th	11.11%	1.39%
10th	10%	1.11%
11th and beyond	0%	

11.1.2. Terms

- 11.1.2.1. Pacific agrees that it shall continue to make physical collocation available under the terms of this Agreement and its tariffs. Any requirement for relocation or eviction of collocated facilities must allow for reasonable due process including, but not limited

to, either Party seeking Commission approval if the Parties cannot reach mutual agreement.

11.1.2.2. Should multiplexing via EISCC between Covad and another party's collocated network facility in Pacific's Wire Center be found to be required under the Act or offered to another party, Pacific will provide this capability to Covad.

11.1.2.3. Notwithstanding any provisions contained in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 16, Covad may place Digital Loop Carrier of its choosing in its collocation space, including shared space collocations described below, for connection of Covad's network to Pacific's network.

11.1.2.4. Pacific agrees to provide Covad with reasonable advance notice, under the Notice provisions of this Agreement, of any proposed modifications to Pacific's tariff regarding physical collocation, except for the addition of Wire Centers and new types of EISCCs.

11.2. Shared Space Collocation

Where sufficient space exists, and upon request, Pacific will provide for collocation on a shared space basis with each collocater's area defined within the shared space. However, shared space collocation will not be made available in Wire Centers where at least one conventional physical collocation installation has already been installed. Such defined space shall, at a minimum, be sized to permit the placement of up to two (2) bays of collocater-provided equipment. Any equipment allowed under 11.1 for Physical Collocation will be allowed under Shared Space Collocation. Access to the collocation space will be via a common entry point and it shall be the sole responsibility of the collocater to provide for any additional security measures to protect its equipment. Such security measures shall be limited to covers or lockable cabinet doors placed directly on the equipment bays of the collocater.

The following charges shall apply for shared space collocation:

11.2.1. The recurring charge for two (2) bays in a shared space collocation shall be \$265.00 per month.

11.2.2. The nonrecurring charge for two (2) bays in a shared space collocation shall be \$5,300.00.

11.2.3. The infrastructure charge for shared space collocation shall be \$25,000.00 and will be refunded on a prorated basis to the first five shared space

collocators as additional shared space collocators utilize shared space collocation at that location within 60 months of when the billing for the first shared space collocation space at that location begins, based on the proration schedule set forth above for physical collocation.

If Covad requests and Pacific provides a shared collocation arrangement as described above, and no other collocator orders and places its equipment in such shared space arrangement within two (2) years after Covad collocates in such space, Pacific reserves the right to reconfigure such space into a suitable single-occupant collocation space. Upon request by Pacific, Covad will reasonably agree to such reconfiguration after one year has elapsed from the time Covad has collocated in such space. The reconfigured space shall only be large enough to enclose the two bays of equipment placed by Covad, along with adequate space for access to the cage, and any other safety standards normally applied to physical collocation facilities by Pacific. Covad will be charged a pro-rated monthly collocation space charge based on the square footage of the reconfigured space in proportion to a standard 10 foot by 10 foot collocation space. Covad will not be charged for the cost of reconfiguring the space. If, after two years from the first placement of a shared space collocation arrangement at Covad's request, such arrangements are on average no more than one-third occupied, the Parties agree to renegotiate Pacific's obligation to continue to offer shared space collocation arrangements.

11.3. Microwave Collocation

Where technically feasible, Pacific will provide for physical collocation of microwave equipment (limited to transport and termination equipment) necessary for interconnection of Covad's network facilities to Pacific's network or access to unbundled network elements on the roofs of Pacific's Wire Centers. Such collocation shall be provided in accordance with the rates, terms and conditions set forth above with respect to physical collocation, plus reasonable recurring and nonrecurring rates for placement of the microwave equipment.

11.4. POT Bay Engineering

The Parties agree that Covad will engineer and pre-provision its side of the POT Bay in physical (including shared space) collocation arrangements.

11.5. Virtual Collocation

Pacific will provide for virtual collocation only where and if Pacific has demonstrated and the Commission has determined that physical collocation is not practical for technical reasons or because of space limitations.

Rates and terms for virtual collocation will be made available on a reasonable and non-discriminatory basis. Rates for virtual collocation will be approximately the same as physical collocation. The Parties agree to cooperate in selecting equipment and establishing installation and operating procedures for virtual collocation in the event that the use of virtual collocation becomes necessary.

The Parties agree that the equipment used in a virtual collocation space shall be purchased by Covad and then sold to Pacific for one dollar (\$1.00). Covad shall retain the right to repurchase the equipment from Pacific for one dollar (\$1.00).

11.6. Mid-Span Meet Arrangements

The Parties may also choose to interconnect via a Mid Span Meet. Such interconnection shall be limited to facilities provided for the interconnection of any local exchange or jointly provided switched access traffic between the Parties.

11.6.1. Physical Arrangements of Mid Span Meets: In a Mid Span Meet, each Party extends its facilities to meet the other Party. The point where the facilities meet is the Mid Span point. Each Party bears its own costs to establish and maintain a Mid Span Meet arrangement. However, the Parties also agree that a technical arrangement for a Mid Span Meet may involve one Party placing and extending its fiber facilities to the Wire Center of the other Party, with sufficient additional length on the fiber to permit the receiving Party to terminate the fiber without requiring splicing of the fiber facilities prior to the terminal equipment in the receiving Party's Wire Center. In this situation, the Parties will negotiate reasonable compensation to be paid to the Party extending the facilities for the associated labor, materials, and conduit space used in extending its facilities beyond a negotiated Mid Span point.

11.6.2. Engineering Specifications: The Parties agree to establish technical interface specifications for Mid Span Meet arrangements that permit the successful interconnection and completion of traffic routed over the facilities that interconnect at the Mid Span Meet. The technical specifications will be designed so that each Party may, as far as is technically feasible, independently select the transmission, multiplexing, and fiber terminating equipment to be used on its side of the Mid Span Meet. Requirements for such interconnection specifications will be defined in joint engineering planning sessions between the Parties. The Parties will use good faith efforts to develop and agree on these specifications within 90 days of the determination by the Parties that such specifications shall be implemented, and in any case, prior to the establishment of any Mid Span Meet arrangements between them. In the event the Parties cannot agree on the technical specifications required, the Parties will, after discussion at the Vice Presidential level, interconnect

with each other using one of the other interconnection arrangements defined elsewhere in this Agreement.

11.6.3. Maintenance Responsibilities: Each Party will be responsible for maintaining its network on its side of the Mid Span point. In the case where a maintenance problem must be resolved in the fiber span between the Parties, the Party with access to the manholes, vaults or conduit space will dispatch maintenance personnel to perform any necessary trouble isolation and repair activities. The Party performing the maintenance activity in the fiber span may bill the other Party for such activity at one-half the hourly labor rate specified in the Maintenance of Service section of this Agreement. Should both Parties have maintenance access to some portions of the manholes, vaults or conduit space on the Mid Span Meet facility arrangement, they will cooperatively determine which Party will perform any trouble isolation or maintenance activities during the initial contact between them when a maintenance problem has occurred.

Prior to the establishment of any Mid Span Meet arrangement, the Parties agree to jointly develop all additional necessary requirements for such interconnection, including but not limited to such items as control and assignment of facilities within the fiber Mid Span Meet arrangement, network management requirements, and operational testing and acceptance requirements for installation of Mid Span Meets.

12. MEET POINT BILLING ARRANGEMENTS

- 12.1. Covad and Pacific will establish meet-point billing ("MPB") arrangements for jointly provided switched access to an IXC, in accordance with the Meet Point Billing guidelines adopted by and contained in the OBF's MECAB and MECOD documents, except as modified herein. Both Parties will use their best reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD.
- 12.2. Covad and Pacific will implement the "Multiple Bill/Single Tariff" option in order to bill any ("IXC") for that portion of the network elements provided by Covad or Pacific. For all traffic carried over the MPB arrangement, Covad and Pacific shall each bill the IXC for its own portion of the applicable elements.
- 12.3. Each Party shall provide the billing name, billing address, and carrier identification code ("CIC") of the IXCs that may utilize any portion of Covad's network in a Covad/Pacific MPB arrangement in order to comply with the MPB Notification process as outlined in the MECAB document. Each Party will be entitled to reject a record that does not contain a CIC code. Such information